Supreme Court, U.S.
FILED

(1)

961125 JAN 7 1997

NO. OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

IN RE: THE INQUIRY OF EVAN W. BROADBELT, J.M.C.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

FRANCIS X. CRAHAY, ESQ.
Counsel of Record

Francis X. Crahay, Esq.
Robert Leonardo, Esq.
On The Brief

TOMPKINS, McGUIRE & WACHENFELD
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102-4070
(201) 622-3000
Counsel for Petitioner

January 7 1997

35 pp

QUESTIONS PRESENTED

1. Does the New Jersey Supreme Court's prohibition on Petitioner's continued guest appearances on television shows impermissibly infringe upon his First Amendment rights?

2. Does the published opinion of the New Jersey Supreme Court (In Re: The Inquiry of Evan W. Broadbelt, J.M.C., 146 N.J. 501 (1996), holding that petitioner "violated Canons 2B and 3A(8) of the Code of Judicial Conduct, where he was never charged with any wrongdoing, never had a hearing, and merely petitioned for review of an advisory opinion, violate petitioner's rights under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

LIST OF PARTIES

Petitioner:

Evan W. Broadbelt, J.M.C.

Respondent:

New Jersey Supreme Court Advisory
Committee on Extrajudicial Activities

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES iv

QUESTIONS PRESENTED i

LIST OF PARTIES ii

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISION AND JUDICIAL CODES INVOLVED 3

STATEMENT OF THE CASE 3

CHRONOLOGY AND STATEMENT OF FACTS 4

REASONS FOR GRANTING THE WRIT 8

THE NEW JERSEY SUPREME COURT'S PROHIBITION ON PETITIONER'S PROPOSED TELEVISION APPEARANCES VIOLATES THE FIRST AMENDMENT IN THAT THE COURT HAS PROVIDED NO BASIS FOR THE ASSERTION THAT PETITIONER'S CONDUCT COMPROMISED THE INTEGRITY OF THE JUDICIARY, AND THE COURT'S PROHIBITION IS CONSIDERABLY MORE RESTRICTIVE THAN NECESSARY TO ACHIEVE ITS STATED OBJECTIVES 8

THE NEW JERSEY SUPREME COURT'S PUBLISHED OPINION (IN RE: THE INQUIRY OF EVAN W. BROADBELT, J.M.C. 146 N.J. 502 (1996)), AMOUNTS TO A PUBLIC REPRIMAND IN VIOLATION OF THE DUE PROCESS CLAUSE AND THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION 24

CONCLUSION 29

TABLE OF AUTHORITIES

CASES **PAGE**

Cooper v. Pate,
378 U.S. 546 (1964) 28

Cruz v. Beto,
405 U.S. 319 (1972) 28

Gentile v. State Bar of Nevada,
501 U.S. 1030, 111 S. Ct. 2720,
115 L. Ed. 2d 923-24 (1991) 20

IN RE: THE INQUIRY OF EVAN W. BROADBELT, J.M.C.,
146 N.J. 502 (1996) 24

In Re: Anastasi,
76 N.J. 510 (1978) 15

In Re: Benoit,
523 A.2d, 1381 (Maine 1987) 13

In Re: Blackman,
124 N.J. 547 (1991) 16

In Re: Hey,
425 S.E.2d, 221 (West Virginia 1992) . . . 11

In Re: Hinds,
90 N.J., 604 (1982) 19,20

In Re: Murray,
92 N.J. 567 (1983) 15

In Re: Santini,
126 N.J. 291 (1991) 15

In Re: The Inquiry of Evan W. Broadbelt, J.M.C.,
145 N.J. 501 (1996) 2

In Re: The Inquiry of Evan W. Broadbelt, J.M.C.,
146 N.J. 501 (1996) reprinted in 8

Richmond Newspapers, Inc. v. Virginia,
448 U.S. 555, 575, 65 L.Ed. 2d 973, 100 S. Ct. 284 (1980)) 20

Ryan v. The Commission on Judicial Performance,
754 P.2d 724 (California 1988) 13

United States v. Garwood,
16 M.J. 863 (A.C.M.R. 1983) affd,
20 M.J. 148 (C.M.A.), cert. denied, 474 U.S. 1005, S. Ct. 524, 88 L. Ed. 2d 456 (1985) 12

Wolf v. McDonnell,
418 U.S. 539, 41 L. Ed. 2d 935, 94 S. Ct. 2963 28

RULE

Code of Judicial Conduct under Rule 2:15 27

STATUTES

28 U.S.C.A. §1257 3

NO.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

IN RE: THE INQUIRY OF EVAN W. BROADBELT, J.M.C.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

The Petitioner, Evan W. Broadbelt, J.M.C., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of New Jersey entered in the above-entitled proceeding on October 10, 1996.

OPINIONS BELOW

1. The letter directive of Assignment Judge Lawrence M. Lawson "vitiating" his prior approval of the petitioner's appearance on the Geraldo T.V. show as violative of Canon 2B of the Code of Judicial Conduct and Guideline IV-A(1)(b)(1)(2) promulgated by the New Jersey Supreme Court's Advisory Committee on Extrajudicial Activities. It is reprinted in the Appendix at page 37a, infra.

2. A letter dated April 18, 1995 from the Advisory Committee on Extrajudicial Activities

reflecting the Committee's disapproval of television appearances. The opinion is reprinted in the Appendix at page 36a, infra.

3. Advisory letter of the Committee on extrajudicial activities dated June 23, 1995 (Opinion 13-95) which ratified its previous vote of disapproval and expressing the view that TV appearances would not be appropriate under the relevant portion of Canon 2 - "a Judge should not lend the prestige of office to advance the private interest of others" and Guideline IV C-1. The opinion is reprinted in the Appendix at page 34a, infra.

4. The Opinion of the Supreme Court of New Jersey dated October 10, 1996, In Re: The Inquiry of Evan W. Broadbelt, J.M.C., 145 N.J. 501 (1996) ruling that the conduct of the petitioner was violative not only of Canon 2B of the Code of Judicial Ethics but also Canon 3A(8) and further that the proscriptions imposed by the New Jersey Supreme Court were constitutional as applied to the petitioner. It is reprinted in the Appendix at page 1a, infra.

JURISDICTION

On October 10, 1996, the Supreme Court of the State of New Jersey rendered an opinion holding

that petitioner violated Canons 2B and 3A(8) of the Code of Judicial Conduct and ruling that the proscriptions placed upon petitioner's speech did not violate the First Amendment. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. §1257.

CONSTITUTIONAL PROVISION AND JUDICIAL CODES INVOLVED

Involved in the within petition are the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Canons 2,3 and 4 of the Code of Judicial Conduct made part of the Rules Governing the Courts of the State of New Jersey. (Appendix at p. 57a-62a).

STATEMENT OF THE CASE

This matter involves the right of a Judge to appear on television, without compensation, giving comments which are designed to be instructive and educational for lay audiences. The New Jersey Supreme Court found that the conduct was violative of two Canons of the Code of Judicial Conduct and that its restrictions on the speech of a Judicial Officer was not violative of the First Amendment.

CHRONOLOGY AND STATEMENT OF FACTS

Petitioner has been a Municipal Court Judge since 1982 and presently serves as a Municipal Court[1] Judge in four municipalities in Monmouth County and one in Ocean County, New Jersey. He has served as an Assistant County Prosecutor, a Municipal Prosecutor in two municipalities, Secretary of a District Ethics Committee for 10 years, and for the past six years has been a member of the Supreme Court Committee on Municipal Courts. He serves as an elected member of the Board of Governors of the American Judges Association.

Since September, 1992, he has appeared as a guest, without compensation (approximately fifty times), on Court TV, providing commentary on criminal trials in various jurisdictions. Illustrative examples were provided to the New Jersey Supreme Court in the Amicus Curiae Brief and Appendix submitted by Courtroom Television Network. The excerpts are reprinted in the Appendix at p. 103a-127a.

---

[1]In New Jersey, Municipal Courts are courts of limited territorial and subject matter jurisdiction. Such jurisdiction includes municipal ordinance, motor vehicle and disorderly person offenses, and certain limited criminal offenses. N.J.S.A. 2B:12-16 et seq.

Between November 1994 and February, 1995, petitioner appeared on the "Rivera Live" program on three occasions, again in accordance with the provisions of Canon 4, to provide commentary on the matter of People of California v. Simpson. Those appearances, also, were without compensation. Petitioner has never made aware of any complaint or criticism of comments made during any of his appearances.

On December 8, 1994, petitioner appeared on a local cable television program, "Legal Line", hosted by Robert Abrams, Esq. of the Monmouth County Bar, to discuss the jurisdiction and procedures of the municipal courts, generally. The next day, petitioner was contacted by the Honorable Lawrence M. Lawson, A.J.S.C.[1] and advised that prior approval was required before he could make any further television appearances. The matter was discussed, and thereafter Judge Lawson issued a memorandum indicating that prior approval was not mandated, but that petitioner should give him notification of future appearances.

---

[1] A.J.S.C. represents "Assignment Judge Superior Court". Assignment judges are the judges responsible for the administration of all courts within their given counties or venues.

Petitioner complied with that memorandum. It is reprinted in the Appendix at page 54a, infra.

On March 20, 1995, petitioner received a letter from Judge Lawson, who stated that he had to "vitiate" his prior approval and requested that petitioner refrain from appearing on any television programs. [It is reprinted in the Appendix at page 37a, infra.]

By letter dated March 20, 1995, petitioner advised Judge Lawson that he disagreed with the change in position and on that same date Judge Lawson referred the matter to the Advisory Committee on Extrajudicial Activities for review. It is reprinted in the Appendix at page 40a, infra.

On March 31, 1995, petitioner filed an inquiry for the Committee's consideration and by letter dated April 18, 1995 was advised by the Committee's secretary that the Committee had held a telephone conference and disapproved of commercial broadcast appearances. Petitioner was further notified that an Advisory Opinion would be issued after the next formal Committee meeting. On June 23, 1995, the Committee issued Opinion #13-95. That Opinion essentially ratified the previous vote of

disapproval of television appearances opining "that the Committee was of the view that such appearances would not be appropriate under the relevant portion of Canon 2 (a Judge should not lend the prestige of office to advance the private interest of others and Guideline IV.C. 1". It is reprinted in the Appendix at page 34a, infra.

Petitioner sought review of this Committee Opinion by Petition for Review to the Supreme Court of the State of New Jersey. In his Letter Brief in support of the Petition for Review, Petitioner raised the constitutional issue that the proposed prohibitions infringed upon his First Amendment rights. The Letter Brief is reprinted in the Appendix at page 83a, infra. (See more specifically pages 85a - 86a and 100a - 102a).

The New Jersey Supreme Court granted the petition and eventually published an opinion which held that Petitioner had violated Canons 3A(8) and 2B of the code of Judicial Conduct and that the restrictions placed upon the Petitioner did not violate his First Amendment rights.

Petitioner did not raise any Due Process issues, since his rights to Due Process were not

involved until the Supreme Court of the State of New Jersey first published the opinion finding "ethical violations" and for which certiorari is now sought.

REASONS FOR GRANTING THE WRIT

THE NEW JERSEY SUPREME COURT'S PROHIBITION ON PETITIONER'S PROPOSED TELEVISION APPEARANCES VIOLATES THE FIRST AMENDMENT IN THAT THE COURT HAS PROVIDED NO BASIS FOR THE ASSERTION THAT PETITIONER'S CONDUCT COMPROMISED THE INTEGRITY OF THE JUDICIARY, AND THE COURT'S PROHIBITION IS CONSIDERABLY MORE RESTRICTIVE THAN NECESSARY TO ACHIEVE ITS STATED OBJECTIVES.

In this matter, Petitioner asked the New Jersey Supreme Court whether his continued appearance on various televised commentary shows was violative of Canon 2B in that a Judge should not lend the prestige of office to advance the private interest of others. Notwithstanding that narrow presentation the New Jersey Supreme Court broadly concluded that not only was Canon 2B violated but Canon 3A(8) was similarly violated, noting, however, that the issues presented by the appeal had not been previously addressed and that adequate guidance concerning judge's appearances on television were not previously available. In Re: The Inquiry of Evan W. Broadbelt, J.M.C., 146 N.J. 501 (1996) reprinted in the Appendix pp. 1a-32a at 4a.

It should be stressed at the outset that the New Jersey Supreme Court found that the Petitioner was "a well-respected Municipal Judge" who had been appearing on television as a guest commentator since 1992 without compensation. The Court expressed that it had no doubt the Petitioner's commentary was informative and educational. (Id. at 25a). Again, a review of the transcript excerpts (provided in the Appendix at pages 103a-127a) are illustrative of the commentaries. The record is void of any complaints about the Petitioner's activities or commentary that led to the proscription of further appearances.

The New Jersey Court acknowledged that its experience was "evolving" and that it "need not now attempt to proscribe precise limits for judicial appearances on television programs." (Id. at 23a). Notwithstanding these stated sentiments, and based upon the limited record before it, the Court gave a blanket prohibition to the Petitioner from making any further television appearances. The Justices strangely held that not every appearance by a Judge on commercial television would be improper or would create the appearance of impropriety, but that a regular appearance on television, whether the program

was commercial or non-commercial on Court decisions in New Jersey, "would clearly be improper." The Court stated that because of Judge Broadbelt's frequent appearances he had become identified with the program and thereby lended the prestige of his judicial office to the broadcast. There is simply no record support for this gratuitous observation. The court did not provide any meaningful definitional distinction between "occasional" or "regular" appearances.

Before reaching its constitutional pronouncement, the New Jersey Supreme Court went beyond the issue presented to it in the Opinion by the Advisory Committee on Extrajudicial Activities, i.e. that the continued appearances would be violative of Canon 2 in that Judge Broadbelt would be lending the prestige of his office to a commercial interest. It added (again, after noticing that the issues had not been previously addressed nor that adequate guidelines had been made available) that Judge Broadbelt "violated" Canon 3A(8) and that Canon 3 provided that a Judge "should perform the duties of judicial office impartially and diligently." There is no question or suggestion that Judge Broadbelt has ever performed the duties of his judicial offices other than impartially

or diligently. Indeed, the Court early noted that Petitioner was and is a well-respected Municipal Court Judge.

Yet, the New Jersey Supreme Court found that Petitioner's conduct "violated" Canon 3A(8). The Court cited a variety of authorities to support this conclusion, yet these authorities are not persuasive when weighed against this record.

Canon 3A(8) prohibits public comment regarding cases pending in any court and the court cites for support of that proposition In Re: Hey, 425 S.E. 2d, 221 (West Virginia 1992). In In Re: Hey, the West Virginia Judicial Hearing Board found, after a hearing, that the respondent there violated Canon 3A(6) of its Judicial Code and recommended that the Judge be publicly censured based upon a complaint wherein the respondent appeared on a nationwide television program and discussed specific facts and issues of a case which was pending before the West Virginia Supreme Court pursuant to a petition to prohibit enforcement of an Order entered by the respondent. During the television program, apparently, the Judge made negative comments in a child custody case regarding the child's educational

performance, church attendance and cast aspersion upon the mother's fitness and character as a custodial parent.

In Re: Hey was a matter clearly different from that presented by this record where we deal with instructional and educational commentary on pending cases. Again, a review of the transcripts of Judge Broadbelt's commentary does not bespeak anything which may be termed hysterical, disparaging, unprofessional or opinionated.

The New Jersey Supreme Court in its Opinion correctly noted that Canon 3A(8) does not prohibit a Judge from making statements in the course of his judicial duties or comments concerning court procedures nor is the Judge forbidden from commenting on a case that is no longer pending. Significantly, the New Jersey Supreme Court pointed to United States v. Garwood, 16 M.J. 863,868 (A.C.M.R. 1983) aff'd, 20 M.J. 148 (C.M.A.), cert. denied, 474 U.S. 1005, S. Ct. 524, 88 L. Ed. 2d 456 (1985), in which a Judge expressed his opinion about tactical decisions by defense counsel, the relevance of certain discovery items and his opinion as to whether defendant should take the stand in a pending case. This conduct was

deemed inexcusable. But, more importantly, that no matter what the Judge's motivation, his stated views crossed the line between permissible and impermissible commentary. Again, we urge that the commentary here under review is not suggested by anyone to be of that impermissible nature. No line was crossed in this case.

The Court cited In Re: Benoit, 523 A. 2d, 1381 (Maine 1987) wherein it was found inappropriate for a Judge following the remand of a case to write to a local newspaper defending his sentences. Again, the Benoit conduct here totally differs from the instant record.

So too, in Ryan v. The Commission on Judicial Performance, 754 P. 2d. 724 (California 1988), it was found that there were three separate instances of violations of Canon 3A(8); (1) that the Judge discussed a draft opinion with the press before notifying the parties of his ruling; (2) the Judge made statements to the press concerning a pending contempt order; and (3) the Judge discussed another pending matter with the press and wrote a letter to a newspaper explaining his sentence in a specific case. It was held that this kind of conduct violated the

Canon against commenting on pending cases. Again, a far, far cry from that which we have in the instant matter. Thus, Hey, contrary to the position the New Jersey Supreme Court cites it for, does not stand for a rule proscribing comment on every case in every court in the United States.

In the instant matter the Petitioner did not discuss or give opinions on the merits or worth of a pending case but rather discussed in broad and general terms instructional facets of the trial of a matter. Petitioner readily accepts that the purpose of the Canon involved is to protect the integrity of the judiciary but urges that there is no showing of any impact or threat of impact on the integrity of the judiciary by his television appearances over the last five years. Indeed, on this point the Court was compelled to direct its Advisory Committee to modify a Guideline to conform with the Canon, which Guideline III.A.5, seemed to provide that the prohibition against commenting on cases was limited to those pending in New Jersey Courts.

Separately, the New Jersey Supreme Court found that Judge Broadbelt's conduct "violated Canon 2B". Canon 2 provides that a Judge should avoid

impropriety and the appearance of impropriety in all activities and 2B proscribes a Judge from lending the prestige of office to advance the private interest of others.

Again, the authorities employed by the Court in finding a "violation" of this Canon simply do not fit the bill when weighed against the record.

In Re: Santini, 126 N.J. 291 (1991) found a violation wherein a Judge telephoned another Judge concerning a client's arrest and noted that a Judge may not use his judicial office to advance the private interest of others nor convey or permit others to convey the impression that he is in a special position to exert influence. It is hard to square the Santini thinking with the Petitioner's commentaries which the Court has specifically found to be "informative and educational."

In Re: Murray, 92 N.J. 567 (1983), found a code violation wherein a Municipal Court Judge wrote to another Municipal Court Judge seeking preferential treatment for a private and personal client.

Also, clearly different is, In Re: Anastasi, 76 N.J. 510 (1978) holding that a Judge should not be a voluntary character witness for a

friend applying for a State issued license because that would lend the prestige of the Judicial Office to advance the private interest of another.

The Court relied on In Re: Blackman 124 N.J. 547, 554 (1991), and found that a Judge's attendance at a picnic hosted by a convicted felon violated the Canon and that his appearance might be held to have been supportive of the host and might create the appearance of impropriety. In all of the above cited cases employed by the Court to support its finding of a "violation", we clearly had judicial behavior that "crossed the line" between the permissible and the impermissible.

Petitioner recognizes and reasserts his acceptance that Canon 2B is to protect the independence and the integrity of the Judiciary. He cannot accept, however, the Court's answer to what it terms a more difficult question, whether a Judge lends the prestige of his office to a television program merely by appearing on it. The New Jersey Supreme Court has said in this matter that a Judge should avoid appearing on television programs when the Judge's association with the program compromises the independence and the integrity of the Judiciary and it

cites as factors in this determination the frequency of appearances, intended audiences, subject matter, and whether or not the program is commercial. Having stated that question and having stated that it is difficult to answer, it does not fairly point to any record support for Judge Broadbelt's conduct which compromises the independence and integrity of the Judiciary or any potentiality for such an impact. Indeed, the court's sole basis for the ban here was the purported frequency of the appearances. There was no mention of the other factors.

The New Jersey Supreme Court, having said the above, and before addressing its constitutional concerns, notes that its experience is "evolving", that it need not now attempt to "proscribe precise limits for judicial appearances on television programs." It notes only that exceptional caution and discretion are essential and the Court anticipated that the Advisory Committee on Extrajudicial Activities will perform a vital role in formulating standards to govern all such appearances in the future. (Id. at 22a). Notwithstanding that, it nonetheless found the Petitioner's conduct on the record here, "violative" of two Ethical Canons. It

then rather glibbly pointed out that Canon 4 was not operative because of the "violations" of the other cited Canons.

Canon 4 essentially states that a Judge may engage in activities to improve the law, the legal system and the administration of justice including speaking, writing, lecturing and participating in activities concerning the law, the legal system and the administration of justice. (Appendix at p. 61a). Petitioner respectfully submits that on this point the argument that Canon 4 is obviated by the alleged violations of Canons 2 and 3 are bootstrapped. Significantly, in January of 1995, the New Jersey Supreme Court approved an amendment to Guideline III.A.1. of the Guidelines for Extrajudicial Activities, which changed the language from a judge "may speak" to "judges are encouraged to accept invitations to speak." (Emphasis supplied).

We turn now to the New Jersey Supreme Court's treatment of the constitutional question on whether the placement of restrictions on a Judge's speech violates the First Amendment of the United States Constitution. The New Jersey Supreme Court, citing cases, begins by noting that a Judge does not

relinquish his or her First Amendment rights on ascending the bench but that limitations may be placed on a Judge's First Amendment right. The Court observed that in analyzing a Judge's right to speak freely, three different tests have been employed: (a) the Pickering public employee balancing test; (b) the strict scrutiny test; and (c) the hybrid Pickering/strict scrutiny test.

The New Jersey Supreme Court, however, chooses to apply the so called "Gentile middle-tier" scrutiny standard which it denotes the "Gentile-Hinds" standard.

The New Jersey Supreme Court noted that it applied a middle-tier scrutiny test in cases involving the regulations of an attorney's speech about pending cases, In Re: Hinds, 90 N.J., 604 (1982). The Court noted that in Hinds they found that a disciplinary rule forbidding an attorney from commenting on a pending case did not violate the First Amendment and further observed that when presented with a similar issue, the United States Supreme Court adopted the Hinds middle-tier scrutiny test and concluded that a State may regulate an attorney's speech if it creates a substantial likelihood of materially prejudicing an

adjudicatory proceeding. Gentile v. State Bar of Nevada, 501 U.S. 1030, 111 S. Ct. 2720, 2745, 115 L. Ed. 2d. 923-24 (1991). (Emphasis supplied).

The Disciplinary Review Rule involved in Hinds essentially provided that during the trial of a criminal matter a lawyer, with either the prosecution or defense, should not make or participate in making an extrajudicial statement which he expects to be disseminated by means of public communication, that relates to the trial or issues in the trial that are reasonably likely to interfere with a fair trial.

In Gentile, the majority of the United States Supreme Court reversed a finding of the Nevada Disciplinary Board against an attorney who had made pretrial statements regarding an indictment of his client. In speaking for the majority, Justice Kennedy stated that "it would be difficult to single out any aspect of government of higher concern and importance to the people in the manner in which criminal trials are conducted." Gentile, supra. at 898 (citing Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575, 65 L.Ed. 2d 973, 100 S. Ct. 284 (1980)). The Court then referred to In Re: Hinds, 90 N.J. 604 (1982), noting that "substantial likelihood of

material prejudice" standard is a linguistic equivalent of "clear and present danger." In reversing the finding by the Nevada Supreme Court that there was a disciplinary breach, the United States Supreme Court stated that neither the Disciplinary Board nor the Reviewing Court explained in any sense in which the Petitioner's statements had a substantial likelihood of causing material prejudice. So, in the instant case, there is no showing or suggestion by the Court or reference to any thing in the record that the appearances by the Petitioner Broadbelt and his commentaries on trials pending or otherwise, contained or had within them a substantial likelihood of causing any material prejudice to either the case, or the integrity of the judiciary.

Again, in reviewing the material supplied to the New Jersey Supreme Court as illustrative of the kinds of commentary the Petitioner Broadbelt was engaging in, the New Jersey Court cited nothing that impaired or had the potential to impair any ongoing trial, be it in New Jersey or otherwise. Petitioner discussed such things as: the definitions of criminal elements as contained in a Court's instruction (Appendix p.103a-105a); how trial records are made and

preserved (Id.); the manner in which expert witnesses testify regarding mental capacity (Appendix p.106a-107a); the effect and manner of cross-examination (Id.); the elements of different murder counts (Appendix p. 108a-109a); how offenses in Municipal or Local Courts may be prosecuted (Appendix p.110a); prosecutor's obligation to present exculpatory as well as incriminatory evidence (Appendix p.111a-113a); the reason for making trial objections (Appendix p.114a-117a); change of venue in criminal matters (Appendix p. 118a); rules governing attorney-client privilege (Appendix p.119a-120a); the use of two juries in a single trial (Appendix p.121a-122a); matters of cross-examination (Appendix p.122a-123a); the use of prior criminal convictions for purposes of affecting credibility (Appendix p.123a-124a); the use of aggravating and mitigating circumstances in sentencing procedures (Appendix p.124a-127a).

A review of this record reflects nothing in the conduct of this Judge in the exercise of his free speech which impaired or had the potential or tendency to impair the judicial process. The Court, in making its sweeping denial of the Judge's right to exercise his free speech (while, at the same time,

acknowledging he had it) simply disregarded and made no reference whatever to the substance of any of the speech he was employing.

If there in fact be a "Gentile/Hinds" standard in testing a Judge's right of free speech, there is absolutely no suggestion or record reference that the Petitioner here had violated that standard (or any other). Again, as Gentile itself says, it is important that the people know the manner in which criminal trials are conducted and that before speech regarding the conduct of trial be proscribed, there must be a showing of substantial likelihood of material prejudice to the Judicial Process from the speech and that on a level of a "clear and present danger" to the good order of the Courts. (Emphasis supplied).

The New Jersey Supreme Court makes no record reference to any reason for the abrupt, unexplained and unwarranted "vitiation" of Judge Broadbelt's commentaries.

No line was drawn. No line was crossed.

We say again, as the New Jersey Supreme Court said, that we deal here with a well-respected Judge whose commentary was informative and educational

and that while the New Jersey Court's experience was "evolving" they would not attempt to prescribe precise limits for judicial appearances on T.V. programs. Notwithstanding all of that, the New Jersey Supreme Court's quick answer to Judge Broadbelt was, "you may not speak at all."

THE NEW JERSEY SUPREME COURT'S PUBLISHED OPINION (IN RE: THE INQUIRY OF EVAN W. BROADBELT, J.M.C. 146 N.J. 502 (1996)), AMOUNTS TO A PUBLIC REPRIMAND IN VIOLATION OF THE DUE PROCESS CLAUSE AND THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

Jurisdiction of this matter was conferred on the New Jersey Supreme Court under the provisions of Rule 1:18A-7. (Appendix p.55a-57a). Petitioner sought advice from the Advisory Committee on Extrajudicial Activities, a body appointed by and serving at the pleasure of the New Jersey Supreme Court.

Rule 1:18A contains no procedure for a petitioner to request or receive a hearing on the inquiry. In this case, no such hearing was offered or held. The Committee issued two letter opinions, dated April 18, 1995 (Appendix p.36a) and June 23, 1995 (Appendix p.34a). There was a telephone polling of the members of the committee, followed by a meeting of

the committee on June 16, 1995. Petitioner was not given the opportunity to appear or participate on either occasion. The committee found no wrongdoing.

The New Jersey Supreme Court, in the context of petitioner's request for advice, rendered and published an opinion determining that petitioner had violated Canons 2B and 3A(8) of the Code of Judicial Conduct.

Although the advisory committee issued its opinion based upon Canon 2, the New Jersey Supreme Court, rather than give petitioner the advice for future conduct which was requested, issued an opinion on petitioner's past conduct, holding:

"We conclude that Judge Broadbelt should not have commented on pending cases from any jurisdiction. Moreover, we are persuaded that Judge Broadbelt's commentary on pending cases on 'Court TV' and 'Geraldo Live' (sic) was inappropriate and had the potential to compromise the integrity of the judiciary in New Jersey'" 146 N.J. In Re: Broadbelt, supra. at 511 (Emphasis supplied) (Appendix at p. 15a).

As to petitioner's request for advice under Canon 2B, the Court similarly ignored the request for advice and instead issued an opinion upon past conduct. "We also

determine whether Judge Broadbelt's conduct violated Canon 2B." (Id. at 512).

"In the instant case, Judge Broadbelt's regular appearances on commercial television violated Canon 2B." (Id. at 515) (Emphasis Supplied) (Appendix at p. 22a).

Further, the Court's response to petitioner's submission of the provisions of Canon 4 were met with a similar adjudicatory, not advisory, response.

> "Canon 4 does not excuse the violations of other canons. . . . "Although Petitioner's conduct may have included teaching about the law, the legal system, and the administration of justice, that conduct is not permitted if it violates another canon. Accordingly, because Petitioner's conduct violated Canons 3A(8) and 2(B), Canon 4 does not excuse it."

Id. at p.517 (Emphasis Supplied)(Appendix at p. 24a-25a).

New Jersey Rule of Court Rule 2:15 (Appendix p. 73a-82a) establishes the Advisory Committee on Judicial Conduct. That Rule applies to all judges in the State of New Jersey, and provides procedures for the discipline and/or removal of judges

from office. That Rule contains the essential elements of procedural due process, including the notice to a judge of a complaint (R.2:15-10b), the opportunity for an informal conference (R.2:15-11(c)), and, if formal proceedings are recommended, the opportunity for a hearing (R.2:15-3).

In this matter, the petitioner appeared on commercial television with the express consent of his Assignment Judge. Upon receiving written notification from the Assignment Judge to refrain from further appearances, petitioner complied with the request and proceeded with this matter under Rule 1:18A, with the precise aim of seeking guidance on future conduct, rather than becoming a respondent charged with a violation of the Code of Judicial Conduct under Rule 2:15.

The Federal question sought to be reviewed herein is whether the decision of the New Jersey Supreme Court, which clearly is a public admonition of the petitioner, has been rendered in violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment.

The Federal question is being raised in this writ for the first time, since petitioner

reasonably anticipated that the New Jersey Supreme Court would issue an opinion giving advice to petitioner as to future conduct, as contemplated by Rule 1:18A. Instead, the Court made findings based upon the prior conduct of Petitioner, conduct approved in advance by the Assignment Judge, without giving petitioner even the slightest semblance of due process.

This Court has consistently held that "[T]he touchstone of due process is protection of the individual against arbitrary action of government. Wolf v. McDonnell, 418 U.S. 539 (1974), 41 L.Ed.2d 935, 94 S.Ct. 2963. In Wolf, this Court reiterated that there is no question that prisoners have First Amendment and Fourteenth Amendment rights (citing Cruz v. Beto 405 U.S. 319 (1972) and Cooper v. Pate, 378 U.S. 546(1964).

More importantly, "[T]he Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests." Wolf, supra. at 557. Further, "We think a person's liberty is equally protected, even when the liberty itself is a statutory creation of the state." (Id. at 558).

Thus, in reaching to silence petitioner, the New Jersey Supreme Court held him out to the world to be the violator of the Code of Judicial Conduct without notice, hearing or reason.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Writ of Certiorari.

TOMPKINS, McGUIRE & WACHENFELD
Counsel for Petitioner

FRANCIS X. CRAHAY
Counsel of Record

Francis X. Crahay, Esq.
Robert Leonardo, Esq.
On the Brief

DATED: January 7 , 1997